**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY, | ) | |
| Charging Party, | ) | Case No. SF-CE-1558 |
| v. | ) | PERB Decision No. 1045 |
| OAKLAND UNIFIED SCHOOL DISTRICT, | ) | May 3, 1994 |
| Respondent. | ) | |

Appearance: Weills & Siegel by Dan Siegel, Attorney, for Oakland Unified School District.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Oakland Unified School District (District) of a proposed decision (attached hereto) by a PERB administrative law judge (ALJ). In that decision, the ALJ found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when it made unilateral changes to the

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

health benefit plan of employees represented by the Building and Construction Trades Council of Alameda County (Council).

The Board has reviewed the entire record in this case, including the proposed decision, transcript, exhibits and the District's statement of exceptions.[2] The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and, therefore, adopts them as the decision of the Board itself.[3]

DISTRICT'S EXCEPTIONS

On appeal, the District pursues an argument not presented before the ALJ or addressed in the proposed decision. The District asserts that a unilateral change is not unlawful unless it has a generalized effect or continuing impact on terms and conditions of employment. (Grant Joint Union High School District (1982) PERB Decision No. 196.) Citing PERB case law, the District argues that unilateral changes in health care plan administration are not unlawful unless they impact actual health benefit levels. Since the burden in showing impact rests with the charging party (Imperial Unified School District (1990) PERB

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(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[2]The Council's response to the District's statement of exceptions was not timely filed with the PERB headquarters office and, therefore, was rejected by the PERB appeals assistant.

[3]The District's request for oral argument in this case was denied by the Board.

Decision No. 825), the District argues that the Council has failed to meet its burden, asserting that the record barely addresses the impact of the health plan change on actual health benefit levels. Therefore, the District argues that the Board should reverse the ALJ's finding and dismiss the charge.

DISCUSSION

An employer's pre-impasse unilateral change in a matter within the scope of representation is a per se violation of EERA. (Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College District (1979) PERB Decision No. 94; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].) In a series of decisions involving changes in health plans and health plan administrators, the Board has held that such a change is negotiable only if it has a material or significant effect or impact on the actual benefits received by employees. (Oakland Unified School District (1980) PERB Decision No. 126, affd. Oakland Unified School Dist, v. Public Employment Relations Bd. (1981) 120 Cal.App.3d 1007, 1012 [175 Cal.Rptr. 105]; Palo Verde Unified School District (1983) PERB Decision No. 321; Trinidad Union Elementary School District and Peninsula Union School District (1987) PERB Decision No. 629; Savana School District (1988) PERB Decision No. 671.) Therefore, in this case the Council must show an impact on the actual health benefits received by employees resulting from the change from the Oakland Public Schools (OPS) plan to Health Net in order to meet the

burden of showing that the change constitutes a violation of EERA.

On appeal, the District argues that this burden has not been met, asserting that "the record as a whole fails to establish any impact on employees resulting from the District's unilateral action." The District further argues that the record shows that the change in its health care plan administration had little or no impact on employees. The District points to District Exhibit No. 9 as evidence that "the level and quality of health care benefits provided through Health Net did not differ materially or significantly from that provided under OPS administration."

On the contrary, the benefit comparison included in District Exhibit No. 9 shows that while the type of health benefits received by employees may not have changed when the District replaced the OPS plan with Health Net, the costs of those benefits to employees did change. For example, emergency care visits required no employee copayment under the OPS plan; under Health Net a $35 copayment is required. Prescription drugs which cost $1 under OPS cost $5-$7 under Health Net. And a series of health plan benefits which had carried a 10 percent - 20 percent copayment requirement under OPS, require no copayment under Health Net. Among these benefits are in-patient maternity services, x-ray services, laboratory and diagnostic services, anesthesia services, blood and blood plasma services and durable medical equipment services. The level of a health plan provided to employees is determined not only by the health and medical

services available under the plan, but also by the employee cost of those services. A health plan provided by an employer at no cost to employees is a materially different benefit than the identical plan requiring employee cost contributions.

The evidence clearly demonstrates that the change from the OPS plan to Health Net materially and significantly affected the cost of the actual health benefits received by employees of the District. Accordingly, the burden of demonstrating the impact of the District's unilateral change of health plans has been met, and the District's exceptions are without merit. Therefore, when the District unilaterally changed the health benefit plan of employees represented by the Council, it violated EERA section 3543.5(a), (b) and (c).

ORDER

Based on the findings of fact and conclusions of law, and the entire record in this case, the Board finds that the Oakland Unified School District (District) violated the Educational Employment Relations Act (EERA or Act), Government Code section 3543.5(a), (b) and (c). Pursuant to EERA section 3541.5(c), it is hereby ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to meet and confer in good faith by unilaterally changing the health benefits of employees in the building and grounds unit.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Restore to employees of the building and grounds unit all the health benefits they would have enjoyed had the District not unilaterally terminated the Oakland Public Schools plan.

2. Make employees whole for any losses they may have suffered due to the District's unilateral action, along with interest at the rate of seven percent per annum.

3. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to classified employees are customarily placed, copies of the Notice attached hereto as an Appendix. The notice must be signed by an authorized agent of the District indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this notice is not reduced in size, defaced, altered or covered by any material.

4. Make written notification of the actions taken to comply with this Order to the San Francisco Regional Director of the Public Employment Relations Board in accordance with her instructions. All reports to the Regional Director shall be served concurrently on the Building and Construction Trades Council of Alameda County.

Chair Blair and Member Carlyle joined in this Decision.

APPENDIX

**NOTICE TO EMPLOYEES**
**POSTED BY ORDER OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**
**An Agency of the State of California**

After a hearing in Unfair Practice Case No. SF-CE-1558, Building and Construction Trades Council of Alameda County v. Oakland Unified School District, in which all parties had the right to participate, it has been found that the Oakland Unified School District (District) violated the Educational Employment Relations Act (Act), Government Code section 3543.5(a), (b) and (c).

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Failing to meet and confer in good faith by unilaterally changing the health benefits of employees in the building and grounds unit.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Restore to employees of the building and grounds unit all the health benefits they would have enjoyed had the District not unilaterally terminated the Oakland Public Schools plan.

2. Make employees whole for any losses they may have suffered due to the District's unilateral action, along with interest at the rate of seven percent per annum.

Dated: _____ OAKLAND UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

**STATE OF CALIFORNIA**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY,<br><br>Charging Party,<br><br>v.<br><br>OAKLAND UNIFIED SCHOOL DISTRICT,<br><br>Respondent. | ) | Unfair Practice Case No. SF-CE-1558<br><br>PROPOSED DECISION (7/20/93) |

Appearances: Van Bourg, Weinberg, Roger and Rosenfeld by Stewart Weinberg, Attorney, for Building and Construction Trades Council of Alameda County; Office of the General Counsel by Cecilia Castellanos, Attorney, for Oakland Unified School District.

Before JAMES W. TAMM, Administrative Law Judge.

PROCEDURAL HISTORY

This complaint, filed on April 27, 1992, alleges that the Oakland Unified School District (District) made unilateral changes to the health benefit plan of employees represented by the Building and Construction Trades Council of Alameda County (Charging Party or Union) in violation of section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act.)[1] A settlement was held, however, the matter remained

[1]EERA is codified at Government Code section 3540 et seq. The pertinent portion of section 3543.5 reads:

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

unresolved. A hearing was held June 8 and 9, 1993. At the conclusion of the hearing the parties made oral arguments and the case was submitted for decision.

## FINDINGS OF FACT

The Charging Party is the exclusive representative of employees in the building and grounds bargaining unit.

Up until May 1, 1992, the District provided District employees with a District sponsored health plan referred to as the OPS plan. This plan had become very expensive to the District. Over the years the District sought without success to negotiate the elimination of the plan with the District's various unions.

At some time prior to 1988, the District and its unions did agree to establish a Labor/Management Joint Advisory Committee on Cost Containment (Committee). The function of the Committee was to study and make recommendations regarding health care cost containment possibilities. Over the years since its establishment, the Committee did make specific recommendations which were negotiated into various collective bargaining agreements. For example, the collective bargaining agreement between the District, and the Charging Party specifically lists cost containment measures such as pre-admission certification for hospital care, increased major medical deductibles, limitations

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(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

on chiropractic and acupuncture treatments, and a generic drug policy among many others.

In the 1991 negotiations between the District and the union representing the District's teachers, the Oakland Education Association (OEA), the parties began exploring the possibilities of replacing the OPS plan with a Health Net plan. At that time, the Committee put further cost containment issues on hold until after the conclusion of the OEA/District negotiations. When the District and OEA eventually reached agreement to replace the OPS plan with Health Net, the District decided to replace the OPS plan with Health Net districtwide in all bargaining units. The decision was made after much discussion among the superintendent's cabinet, however, prior to negotiations with any unions other than OEA.

On March 3, 1992, the District sent a letter notifying the Charging Party that the District desired to terminate the OPS plan May 1, 1992. The letter also said that if the Charging Party wished to bargain "the ramifications" of the termination of the OPS plan, they should set up a meeting.

Although the March 3 letter did not make it clear that the District had already decided to terminate the OPS plan, the testimony of District witnesses at the hearing, however, supports a finding that the District's decision to terminate the OPS plan was firm and irreversible by March 3, 1992. This finding is consistent with the District's March 3, 1992, offer to negotiate

over "the ramifications" of the decision and not the decision itself.

Between March 3, 1992, when the District invited the Charging Party to negotiate over the ramifications of the switch in health plans, up to May 1, 1992, the District negotiator, Julian Cane (Cane), met with Charging Party's negotiator, Jim Brown (Brown), to discuss the issue informally on more than one occasion. At one of those meetings, probably in April,[2] Cane presented Brown with a proposal for consideration. The proposal was one that had been originally addressed to a different union. While the negotiators discussed the issue, these informal sessions could not be considered negotiating sessions for at that time the Charging Party had not even agreed to reopen the collective bargaining agreement.[3]

On April 13, 1992, Brown wrote to Cane asking for some information and indicating that upon receipt of that information, the Charging Party might choose to mutually re-open the collective bargaining agreement.

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[2]Both negotiators were very vague about when meetings occurred and which conversations occurred at specific meetings.

[3]There is a heated dispute among the parties about the status of their collective bargaining agreement. Brown claims that the collective bargaining agreement distributed by the District is not the agreement that he signed. It is unnecessary, however, to resolve that dispute in order to resolve this unfair practice charge. Under either interpretation of the contract, the collective bargaining agreement could be re-opened prior to its expiration only by the mutual consent of the parties.

On April 27, 1992, after it was clear to Charging Party that the District had already decided to replace the OPS plan with Health Net, the Charging Party filed this unfair practice charge.

On May 1, 1992, the District implemented its unilateral decision to terminate the OPS plan and instituted the Health Net plan in its place.

On May 5, 1992, the Charging Party agreed to meet with the District regarding termination of the OPS plan. Charging Party made it clear, however, that it was doing so only under protest, pending resolution of this unfair practice charge.

The parties met again on May 13 and May 28, 1992, but the Union maintained its position that it was not negotiating and would pursue the unfair practice charge.

Cane testified that the District's decision was made for financial reasons. The OPS plan was so expensive that it was diverting badly needed funds from other educational programs. According to Cane, the decision to go to Health Net was also based upon a recommendation by the Committee to do so. Cane, however, was not a member of the Committee, and did not regularly attend Committee meetings. Cane's testimony on this point was directly contradicted by Jim Tate (Tate), the Charging Party's representative to the Committee, and by Jack Phar (Phar), the District's representative on the Committee. Both Tate and Phar testified that the Committee never made any recommendation to switch from OPS to Health Net. Since Cane was not a member of

the Committee and Tate and Phar were, I credit their testimony over Cane's on this issue.

However, even if a vote had been taken on this issue by the Committee, and even if it had made a recommendation to switch from OPS to Health Net, that recommendation would not have been binding upon Charging Party. There was no evidence that the Committee was ever given authority by the Charging Party to negotiate changes to health benefits. Moreover, both Cane and Phar agreed that Tate consistently maintained the position that any changes to the health plan was negotiable.

While all witnesses agreed that the OPS plan was very expensive to the District and that the District was losing money on the plan, there was no evidence that the District was forced to terminate the OPS plan in the building and grounds unit on May 1 due to a fiscal emergency. According to District witnesses, there were other choices available to the District, such as raising health care premiums or, continuing the OPS plan in the building and grounds unit above. However, these other possibilities were not seriously considered by the District. In fact, the District never even calculated the cost of continuing the plan for just the building and grounds unit.

In summary, the District sought to replace an expensive self-insured health plan with a less expensive one. After reaching agreement with the teacher's unit, the District made the decision to terminate the OPS plan and replace it with Health Net. The District was able to reach agreement on the change with

all bargaining units except the Charging Party. When the District was unable to reach agreement with the Charging Party, it went ahead anyway and implemented its earlier decision.

ISSUE

Did the District violate EERA section 3543.5(b) and (c) by unilaterally changing the health benefit plan?

DISCUSSION

It is well settled that absent special circumstances, a district's unilateral action on a matter within the scope of representation is a per se violation of EERA. (Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College District (1979) PERB Decision No. 94.) Health benefits are clearly enumerated within the scope of representation.

In this case, it is clear that the parties had not completed the negotiations process. It is not certain that the parties ever even started the process. Even under the District's interpretation of the parties collective bargaining agreement, the agreement could only be re-opened for negotiations by mutual consent. Thus, the Charging Party was entitled to decline to negotiate any changes in the contract and the District would be bound to continue the status quo regarding health benefits. The status quo was having the OPS plan available to employees in the unit.

However, setting aside any contractual rights enabling the Charging Party to refuse to negotiate, it is clear that the

District did not engage in good faith negotiations. The decision to terminate the OPS plan was made unilaterally by the District prior to any negotiations with the Charging Party. The decision was made prior to the District's March 3, 1992, invitation to negotiate the ramifications of the decision.

The District argues two defenses. The first is that the Charging Party waived rights to,negotiate by not responding to the District's March 3 invitation to negotiate until April 13 and by not agreeing to negotiate until May 5. According to the District, the Charging Party's refusal to negotiate on May 13 and 28 is further evidence of the Charging Party's bad faith.

This argument is unpersuasive since the District had not demonstrated that the Charging Party had any obligation to negotiate changes in the health benefits absent a mutual agreement to re-open the contract. Also, it is clear that the District did not give proper notice or an opportunity to negotiate until after the District had unilaterally made the decision to terminate the plan. This argument is also unpersuasive because at no time did the District ever offer to negotiate the decision to terminate the OPS plan. It only offered to negotiate the effects of its unilateral decision. Finally, Charging Party's refusal to negotiate on May 13 and 28 is not evidence of bad faith by the Charging Party since the OPS plan had already been unilaterally terminated by the District on May 1. The Charging Party should not be forced into the position

of trying to bargain back to the status quo after a policy has been unilaterally changed.

The District's second defense is that its unilateral action should be excused due to a business necessity. In order to prove a business necessity, the District must show:

> . . . an actual financial emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before taking action. (Emphasis added.) (Calexico Unified School District (1983) PERB Decision No. 357 (adopting administrative law judge's proposed decision.)

The Board interpreted its Calexico decision in Compton Community College District (1989) PERB Decision No. 720.

> In Calexico, the district unilaterally imposed a freeze on teachers' step and column increases, which were being negotiated as part of the parties' reopener negotiations, in order to present a balanced budget to the superintendent by September. The freeze was effective the start of school in September. Testimony indicated that the district could have technically balanced its budget without implementing the freeze but declined to do so because such action would have reduced the district's reserves and, thus, would not have been financially responsible. The district further argued that it remained willing to continue to negotiate even after the decision was unilaterally made. The Board rejected all of the district's arguments and held that, even though the district presented convincing evidence of the difficult financial circumstances it faced, the district failed to show that it had no alternative to instituting the unilateral freeze prior to the completion of bargaining. Furthermore, the Board found that the district's financial problems were not the result of a sudden, unexpected change in circumstances, but rather resulted from budgetary problems which arose much earlier in the year.

In Compton, supra, the District had been in a dire financial situation. It not only lacked a reserve fund, but had been forced to obtain advance apportionments in excess of $1 million during the previous two years. The current years proposed expenditures exceeded projected total revenues by $1.3 million, not counting the $1 million in advance apportionment it received. Dissenting Board Member Stephen Porter argued that the district's worsening financial crisis coupled with the district's unsuccessful attempts to expedite impasse procedure were sufficient to establish a business necessity defense.

The Board majority, however, specifically rejected that reasoning and found the district had not satisfied its burden of proving that the financial crisis had offered no real alternative to the unilateral action and had prevented any opportunity for meaningful negotiations. Since "it may have been possible" for the district to formulate a budget without the unilateral cuts, the district had failed to prove that unilateral action was its only alternative.

The Board's holding in San Francisco Community College District (1979) PERB Decision No. 105, is similar. There, the district unilaterally withheld salary increments and postponed sabbaticals in reaction to the "pending financial crisis" resulting from the passage, in 1978, of Proportion 13. The Board held that the district should have taken the matter to the negotiating table.

> An employer is under no obligation at any time to reach agreement with the exclusive

> representative. The duty imposed by the statute is simply - but unconditionally - the duty to meet and negotiate in good faith on matters within the scope of representation. Thus, the confusion bred by the passage of Proposition 13 did not excuse the District's obligation to meet and negotiate with the Federation, nor did it justify the District's unilateral actions. (San Francisco Community College District, supra.)

See also NLRB v. Auto Fast Freight (9th Cir. 1986) #793 F.2d 1126 [122 LRRM 3058], where the court upheld the National Labor Relations Board's (NLRB) rejection of an employer's business necessity defense. The employer in that case, like in the case at hand, had been aware of its severe economic problems for months prior to taking unilateral action. The NLRB concluded that the financial problems did not suddenly arise to create an urgency that would justify the unilateral action.

The evidence in this case regarding business necessity is quite clear. Although the District was clearly having financial difficulties, several options, short of unilaterally terminating the OPS plan, were available to the District. The choices available to the District may not have been easy choices for the District, but they were, in fact, choices.

The District has also failed to prove that its financial condition allowed no additional time for further negotiations or for completion of the impasse procedures of the Act. There is not a single piece of evidence that the May 1 OPS plan termination date was a magical deadline for anything.

## CONCLUSION

The District took unilateral action in terminating the OPS plan and replacing it with the Health Net plan in the buildings and grounds unit. The Charging Party was not under an obligation to re-negotiate health benefits absent a mutual agreement to re-open the contract. Even if the Charging Party had been obligated to re-negotiate the health benefits, the District's unilateral decision to replace the OPS plan with Health Net was made prior to notifying the Charging Party and affording an opportunity to negotiate over the District's decision. The District has also failed to prove that it had no other alternative available to it and that circumstances allowed no time for meaningful negotiations prior to taking action.

In taking its unilateral action, the District violated section 3543.5(c) and derivatively (b). The facts of this case also support the allegation in the complaint of an independent violation of section 3543.5(a).

## REMEDY

Section 3541.5(c) gives PERB broad statutory authority to fashion appropriate remedies for unfair practices. In cases involving unilateral action, PERB generally orders employers to restore the status quo as it existed prior to the violation. (Santa Clara Unified School District (1979) PERB Decision No. 104.) Thus, the District should restore to employees of the building and grounds unit all the health benefits they would have enjoyed, had the District not unilaterally terminated the OPS

plan. The District should also make the employees whole for any losses they may have suffered due to the District's unilateral action, along with interest at a rate of seven percent per annum. (San Francisco Unified School District (1990) 222 Cal.App.3d 146 at pp. 151-152 [272 Cal.Rptr. 38].)

It is also appropriate that the District be required to post a notice incorporating the terms of the order. The Notice should be subscribed by an authorized agent of the District, indicating that it will comply with the terms thereof. The Notice shall not be reduced in size and reasonable effort will be taken to insure. that it is not altered, covered by any material or defaced and will be replaced if necessary. Posting such a notice will inform employees that the District has acted in an unlawful manner and is being required to cease and desist from this activity and will comply with the order. It effectuates the purposes of EERA that employees be informed of the resolution of the controversy and will announce the District's readiness to comply with the ordered remedy. (Davis Unified School District, et al. (1980) PERB Decision No. 116; see Placerville Union School District (1978) PERB Decision No. 69.)

## PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to the Educational Employment Relations Act (Act), Government Code section 3541(c),.it is hereby ordered that the Oakland Unified School District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to meet and confer in good faith by unilaterally changing the health benefits of employees in the building and grounds unit.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Restore to employees of the building and grounds unit all the health benefits they would have enjoyed had the District not unilaterally terminated the OPS plan.

2. Make employees whole for any losses they may have suffered due to the District's unilateral action, along with interest at the rate of seven percent per annum.

3. Within ten (10) workdays of service of a final decision in this matter, post at all school sites and all other work locations where notices to employees are customarily placed, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, altered, defaced or covered by any other material.

2. Within five (5) workdays of service of a final decision in this matter, notify the San Francisco Regional Director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this Order. Continue to report in writing to the Regional Director

periodically thereafter as directed. All reports to the Regional Director shall be served concurrently on the Charging Party.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a request for an extension of time to file exceptions or a statement of exceptions with the Board itself.

This Proposed Decision was issued without the production of a written transcript of the formal hearing. If a transcript of the hearing is needed for filing exceptions, a request for an extension of time to file exceptions must be filed with the Board itself (Cal. Code of Regs., tit. 8, sec. 32132). The request for an extension of time must be accompanied by a completed transcript order form (attached hereto). (The same shall apply to any response to exceptions.)

In accordance with PERB regulations, the statement of exceptions must be filed with the Board itself within 20 days of service of this Decision or upon service of the transcript at the headquarters office in Sacramento. The statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (Cal. Code of Regs., tit. 8, sec. 32135; Cal. Code of Civ. Proc, sec. 1013

shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

James W. Tamm
Administrative Law Judge